

EXHIBIT 16

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SIMPLEAIR INC.,)
)
Plaintiff,) CIVIL ACTION NO.
) 2:14cv00679-JRG
v.)
)
AMAZON.COM INC.,)
)
Defendant.)
_____)
)

VIDEOTAPED ORAL DEPOSITION OF
DAVID B. JOHNSON, PH.D.
Houston, Texas
Wednesday, April 8, 2015

Reported by:
MICHAEL E. MILLER, FAPR, RDR, CRR
Notary Public
JOB NO. 92352

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3
4 April 8, 2015

5 8:54 a.m.
6

7 Videotaped Oral deposition of DAVID B.
8 JOHNSON, Ph.D., held at the Marriott Medical
9 Center, 6580 Fannin Street, Houston, Texas,
10 pursuant to the Federal Rules of Civil Procedure
11 before Michael E. Miller, Fellow of the Academy
12 of Professional Reporters, Registered Diplomate
13 Reporter, Certified Realtime Reporter and Notary
14 Public in and for the State of Texas.
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A P P E A R A N C E S:

DOVEL & LUNER

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Counsel for Defendant

ALSO PRESENT:

Peter Jennings, Videographer

--o0o--

1 THE VIDEOGRAPHER: Will the court
2 reporter please swear in the witness.

3 DAVID B. JOHNSON, Ph.D.,
4 having been duly sworn,
5 testified as follows:

6 EXAMINATION

7 BY MR. JACOBSON:

8 Q. Please state your name.

9 A. David B. Johnson.

10 Q. You've been hired as an expert
11 witness by Amazon; is that correct?

12 A. That's correct.

13 Q. Are you here to testify about the
14 meaning of words in the patents involved in this
15 case?

16 A. That's correct.

17 Q. Let's discuss the term data as it is
18 used in the patent claims.

19 A. All right.

20 Q. Is it your opinion that the ordinary
21 meaning of data is information in any form on
22 which computer programs operate?

23 A. Generally, yes. But, I mean, I would
24 say that the meaning of data is well understood.
25 Data is data, data is bits, and computers operate

1 on data. So, I mean, generally what you said is
2 correct, but I don't think anybody would have any
3 question about what data means.

4 Q. Do you agree that data, as it is used
5 in the patent claims, can include message header
6 information?

7 MS. SHAMILOV: Objection, form.

8 A. Data can include any kind of bits.
9 Doesn't matter whether it's header or payload or
10 whatever.

11 BY MR. JACOBSON:

12 Q. Can data include message header
13 information, as data is used in the patent
14 claims?

15 MS. SHAMILOV: Objection, form.

16 A. I tried to just answer that, but yes.

17 BY MR. JACOBSON:

18 Q. Appreciate it.

19 Do you agree that as the term data is
20 used in the patent claims, data is not limited to
21 just the payload of a message?

22 MS. SHAMILOV: Objection, form.

23 A. Again, I think I just answered that,
24 but it's not limited to just payload.

25 MR. JACOBSON: I'm holding a copy of

1 the '279 patent involved in this case. Let's
2 mark this as Exhibit 1, please.

3 (Johnson Deposition Exhibit 1
4 marked.)

5 MS. SHAMILOV: Wasted a lot of trees
6 not making it double-sided.

7 MR. JACOBSON: I hate double-sided.
8 BY MR. JACOBSON:

9 Q. Dr. Johnson, take a look at claim 1,
10 which is in column 32. Do you see where, in
11 line 49, the claim requires processing the
12 received data with at least one parser?

13 A. Yes.

14 MS. SHAMILOV: Just for the record,
15 it says process, not processing.

16 MR. JACOBSON: Sure.

17 A. Yes.

18 BY MR. JACOBSON:

19 Q. Does this limitation require
20 processing the payload of a message?

21 MS. SHAMILOV: Objection, form.

22 MR. JACOBSON: Withdrawn. Let me ask
23 that differently.

24 BY MR. JACOBSON:

25 Q. Is it correct that this limitation

1 does not require processing specifically the
2 payload of a message?

3 MS. SHAMILOV: Objection, form.

4 A. It requires processing the data, and
5 we've already covered what data is, so the answer
6 would be: It doesn't require processing of
7 payload.

8 BY MR. JACOBSON:

9 Q. So if we had a parser that breaks up
10 or divides just a received message header, that
11 would satisfy this particular limitation?

12 MS. SHAMILOV: Objection, form. Just
13 for the record, the scope of this deposition is
14 his declaration and opinions expressed in the
15 declaration.

16 MR. JACOBSON: Okay. This is related
17 to that. Let's keep going. Just "Objection,
18 form," please.

19 MS. SHAMILOV: Okay.

20 MR. JACOBSON: Let me reask my
21 question.

22 THE WITNESS: I'm sorry.

23 BY MR. JACOBSON:

24 Q. We have a parser that breaks up or
25 divides just a received message header, that

1 would satisfy this particular limitation?

2 MS. SHAMILOV: Objection, form.

3 THE WITNESS: I'm sorry, could you
4 just ask the question one more time?

5 MR. JACOBSON: I can.

6 THE WITNESS: Yeah.

7 BY MR. JACOBSON:

8 Q. If we had a parser that breaks up or
9 divides just a received message header, that
10 would satisfy this limitation, correct?

11 MS. SHAMILOV: Objection, form.

12 A. It would -- sometimes yes and
13 sometimes no. I mean, it would depend on, for
14 example, where the data was -- where the message
15 header was received from.

16 BY MR. JACOBSON:

17 Q. Well, let's just focus on the claim
18 language "process the received data with at least
19 one parser." Do you see that?

20 A. Okay. I do, but received -- that
21 received data has an antecedent in the claim.

22 Q. Okay. Can you pay attention to just
23 the limitation, "process the received data with
24 at least one parser," and not the claim language
25 that comes before?

1 A. I don't think I can, because this is
2 part of a claim and it has a clear antecedent in
3 the claim.

4 Q. Is it your opinion that just this
5 claim language, "process the received data with
6 at least one parser," includes some requirement
7 about where the data is received from?

8 A. The claim clearly says "central
9 broadcast server configured to receive data from
10 at least one information source and process the
11 received data," so the received data we're
12 talking about is the data that came from the
13 information source.

14 Q. You're talking about other claim
15 language than the phrase I'm talking about,
16 correct?

17 A. I'm talking about the meaning of that
18 limitation in the claim. A single limitation in
19 the claim can't be interpreted standing all by
20 itself. It has to be read in the context of the
21 claim it's a part of, certainly, and as well in
22 the context of the specification.

23 Q. So what is your opinion on the
24 requirements to meet the limitation, "process the
25 received data with at least one parser"?

1 MS. SHAMILOV: Objection, form.

2 A. I don't quite understand what you're
3 trying to ask that you haven't already asked.
4 I'm sorry.

5 BY MR. JACOBSON:

6 Q. Well, you were telling me that in
7 order to understand what it means to process the
8 received data with at least one parser, it's your
9 opinion that you need to look to other claim
10 language; is that accurate?

11 A. What I'm trying to say is, you seem
12 to be asking the question sort of generically
13 about any header, and the claim language only
14 applies to the data received from the information
15 source.

16 Q. Okay. So let's try it this way.
17 Assume we have a header that is received from an
18 information source.

19 A. Okay.

20 Q. Now, to satisfy the limitation
21 "process the received data with at least one
22 parser," it's sufficient to break up or divide
23 just that header, correct?

24 MS. SHAMILOV: Objection, form.

25 A. You receive a message from an

1 information source, then process that received
2 data, then that processing could be just breaking
3 up or dividing -- I mean, doing what processing
4 means to that header of that received message.

5 BY MR. JACOBSON:

6 Q. Let's discuss the term generating
7 data, as it is used in the patents. Is it your
8 position that SimpleAir's construction is
9 incorrect because it reads limitations into the
10 claims?

11 A. Could you provide me a copy of my
12 declaration? And it would also be helpful if I
13 had the exact wording of SimpleAir's construction
14 in front of me.

15 Q. Sure.

16 MR. JACOBSON: Let's mark as
17 Exhibit 2 the declaration of Dr. Johnson on claim
18 construction.

19 (Johnson Deposition Exhibit 2
20 marked.)

21 BY MR. JACOBSON:

22 Q. I believe you're looking for page 18.

23 A. Thank you.

24 Q. Page 17.

25 MS. SHAMILOV: Jonas, do you have the

1 A. Okay.

2 Q. What is the general ordinary meaning
3 of software subsystem?

4 MS. SHAMILOV: Objection, form.

5 A. In what context?

6 BY MR. JACOBSON:

7 Q. What would software subsystem mean to
8 one skilled in the art, setting aside the
9 patents?

10 MS. SHAMILOV: Objection, form.

11 A. So someone -- I'm trying to
12 understand the context of the question. You're
13 asking about someone who's skilled in the art of
14 networking or, you know, sort of generally the
15 field of the patents, but perhaps someone who's
16 never seen these patents?

17 BY MR. JACOBSON:

18 Q. Yes.

19 A. Just someone who you ask them what is
20 a software subsystem.

21 Q. Let me ask it this way: In the field
22 of computer science or networking, what is the
23 ordinary meaning of software subsystem?

24 A. A piece of software. It sort of has
25 no real clear meaning. For example, subsystem in

1 that context really adds no meaning beyond
2 software.

3 Q. Is it your opinion that a software
4 subsystem is identical to software?

5 MS. SHAMILOV: Objection, form.

6 A. Broadly yes, you could say software
7 subsystem is somehow, but in a very vague,
8 ill-defined way, somehow sort of trying to --
9 software -- let me think how to say this.

10 Imagine some program. That program
11 consists of many lines of source code. Software
12 is -- line 1 of that source code, that's
13 software. Line 2 is software. Lines 5 through
14 7, that's software. The whole program, that's
15 software.

16 If you said a software subsystem, you
17 might mean the entire program as opposed to some
18 arbitrary piece of the program.

19 BY MR. JACOBSON:

20 Q. How would the entire program be a
21 subsystem?

22 MS. SHAMILOV: Objection, form.

23 A. Subsystem is trying to identify some
24 defined -- but not in any clear way, but some
25 kind of a unit of the software that's not sort of

1 an arbitrary little snippet. So like line 1 of
2 the source code, that's not a software subsystem.

3 Software subsystem is a unit that's
4 not -- I mean, that sort of stands on its own in
5 some sense. I mean, system versus subsystem,
6 subsystem would mean that this is part of a
7 larger whole.

8 BY MR. JACOBSON:

9 Q. Okay. So one thing software
10 subsystem would tell a person of ordinary skill
11 is that you have some software that's part of a
12 larger whole?

13 MS. SHAMILOV: Objection, form.

14 A. Part of a larger whole of more
15 software.

16 BY MR. JACOBSON:

17 Q. A second thing software subsystem
18 would tell a person of ordinary skill is that the
19 software is a unit that stands on its own in some
20 sense?

21 MS. SHAMILOV: Objection, form.

22 A. It would not tell one of ordinary
23 skill that it's a unit that stands on its own.
24 It sort of suggests that. I mean, it has a
25 slight suggestion that when I say software

1 subsystem as I'm talking to a technical colleague
2 outside of the field of these patents, if I say a
3 software subsystem, I probably -- or suppose you
4 said software subsystem, I would probably guess
5 that you didn't mean some arbitrary, you know,
6 snippet that you just sort of pulled out of the
7 program with no thought to, you know, like -- as
8 I said, line 1 versus line 2 or 5 through 7,
9 that's an arbitrary snippet.

10 So I would think you probably didn't
11 mean an arbitrary snippet of the code, but I
12 wouldn't know which snippet you meant and how
13 arbitrary it could be and still meet what you're
14 trying to say is a software subsystem.

15 But clearly, software subsystem is
16 trying to say something beyond just software, and
17 one aspect of it, as I said, is that it's a piece
18 of a larger whole or larger piece of software, a
19 larger, you know, collection of software.

20 But it sort of has this connotation
21 that it's not only a piece of the larger whole,
22 but it's a -- I don't know, a meaningful piece as
23 opposed to an arbitrary piece.

24 BY MR. JACOBSON:

25 Q. Let's now discuss software subsystems

C E R T I F I C A T E

I, MICHAEL E. MILLER, FAPR, RDR, CRR,
Notary Public in and for the State of Texas, do
hereby certify:

That DAVID B. JOHNSON, Ph.D., the
witness whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the testimony
given by such witness;

That pursuant to FRCP Rule 30,
signature of the witness was not requested by the
witness or other party before the conclusion of
the deposition;

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this April 8, 2015.

MICHAEL E. MILLER, FAPR, RDR, CRR